BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In Re Requests Of	)	
	)	
LIBERTY CABLE CO., INC.	)	
	)	
For Special Temporary Authority	)	WT DOCKET NO. 96-41
For Private Operational Fixed	)	
Microwave Radio Service	)	
	)	
New York, New York	)	

To: Hon. Richard L. Sippel, Administrative Law Judge

REPLY OF TIME WARNER CABLE OF NEW YORK CITY AND PARAGON COMMUNICATIONS TO OPPOSITION OF BARTHOLDI CABLE CO., INC.

Arthur H. Harding
R. Bruce Beckner
Jill Kleppe McClelland
Debra A. McGuire
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 939-7900

Attorneys for
TIME WARNER CABLE OF NEW YORK CITY
and
PARAGON COMMUNICATIONS

Dated: October 22, 1997

TABLE OF CONTENTS

SUMMARY

The Presiding Judge should grant the motion filed by Time Warner Cable of New York City and Paragon Communications (collectively, "TWCNYC") to admit the Liberty Cable Co., Inc. ("Liberty") Internal Audit Report ("the Report") in evidence, to take additional discovery, and to compel discovery responses regarding the Report. The purpose of this proceeding is to determine whether Liberty is qualified to possess a license from the Federal Communications Commission ("FCC" or "Commission") to operate microwave paths. The January and May 1997 hearings specifically focused on Liberty's credibility regarding when it initially learned that it was operating microwave paths without FCC authorization. The Report is highly relevant to the resolution of this proceeding because it raises concerns about Liberty's credibility. Liberty's statement that it "does not rely" on the Report has no bearing on the relevance or significance of the Report.

The Report calls into question Liberty's credibility because Report directly contradicts Liberty witnesses' prior testimony regarding when they first learned that Liberty had unauthorized operations. Statements in the Report are also inconsistent with the proposed findings of fact that Liberty has urged the Presiding Judge to adopt. The inconsistencies revealed by the Report are significant because they involve Liberty's credibility as to when it initially became aware of illegal activations -- a primary issue in this proceeding. As both TWCNYC and the Wireless Telecommunications Bureau (the "Bureau") state, additional discovery related to the factual foundation of the Report is necessary to resolve material issues in this proceeding.

Liberty should be compelled to respond to TWCNYC's discovery requests. The discovery requested by TWCNYC is not precluded by the attorney-client privilege or the

work-product doctrine. In previously served interrogatories, TWCNYC has asked Liberty to identify the people and documents involved in preparing the Report. This discovery only involves factual information, and thus, is not prevented by the application of any privilege. Similarly, TWCNYC is entitled to the documents used to prepare the Report. First, Liberty did not properly raise any privilege regarding the Report, and therefore, waived any privilege protection for the Report. This waiver encompassed all communications about the Report. Therefore, Liberty should be compelled to produce all factual documents related to the Report, including transcripts and tape recordings of interviews, signed statements of interviewees, and factual back-up information.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In Re Requests Of	)	
	)	
LIBERTY CABLE CO., INC.	)	
	)	
For Special Temporary Authority	)	WT DOCKET NO. 96-41
For Private Operational Fixed	)	
Microwave Radio Service	)	
	)	
New York, New York	)	

To: Hon. Richard L. Sippel, Administrative Law Judge

REPLY OF TIME WARNER CABLE OF NEW YORK CITY AND PARAGON COMMUNICATIONS TO OPPOSITION OF BARTHOLDI CABLE CO., INC.

Pursuant to the Presiding Judge's Order, Time Warner Cable of New York City and Paragon Communications (collectively "TWCNYC") hereby submit this Reply to the Opposition of Bartholdi Cable Co., Inc. to the Motion of TWCNYC to Place Documents in Evidence, to Take Additional Discovery, and to Compel Discovery Responses, filed October 15, 1997 ("Liberty Opposition"). Order, FCC 97M-159 (rel. September 19, 1997).

PRELIMINARY STATEMENT

On October 1, 1997, TWCNYC requested the Presiding Judge to accept Liberty's Internal Audit Report (the "Report") in evidence, permit limited additional discovery regarding the factual foundation for the Report, and compel discovery responses. Motion of TWCNYC to Place Documents in Evidence, to Take Additional Discovery and to Compel Discovery Responses, filed October 1, 1997 ("TWCNYC Motion"). The Report is highly relevant to the decision of whether Liberty Cable Co. ("Liberty") should be granted a license

to operate microwave paths. First, the Report raises credibility issues because it contains statements that are inconsistent with Liberty witnesses' prior testimony regarding when they first learned of Liberty's unauthorized operations. Second, the Report seriously challenges Liberty's assertion that "going forward, Liberty can be relied upon to fully comply with the law." See Opposition of Liberty to the Motion of TWCNYC, filed October 15, 1997, at 18 ("Liberty Opposition"). The Report discloses Liberty's pervasive illegal activation of microwave paths, even after Liberty received a warning letter from counsel, which Liberty has characterized as a "remind[er] [to] Liberty of the applicable rules." Liberty Reply to Supplemental Proposed Findings of Fact and Conclusions of Law of TWCNYC, filed June 23, 1997, at ¶ 4. The Report bears on Liberty's credibility before the Federal Communications Commission ("Commission" or "FCC"), as well as its ability to operate within the Commission's regulations. As such, the factual basis for the Report needs to be discovered to assess the weight the Report should be given.

Liberty continues to deny the relevance of the Report primarily because Liberty "does not rely" on the Report. Liberty Opposition, at 17. However, Liberty's decision "not to rely on" the Report does not eliminate the existence of the Report nor prove its irrelevance. While Liberty may choose now to advocate a different version of events than those presented in the Report, Liberty cannot simply ignore the inconsistencies revealed by the Report. Moreover, Liberty's actions actually belie its position of non-reliance on the Report. In August 1995, when it submitted the Report to the Wireless Telecommunications Bureau (the "Bureau") in response to a Section 308(b) request for additional information regarding the captioned applications, Liberty certainly "relied on" the Report. In addition, Liberty has

touted the thoroughness and accuracy of the investigation behind the Report. In an affidavit submitted in support of Liberty's Application for Review of the Bureau's denial of confidential treatment for the Report, Lloyd Constantine, one of the attorneys who conducted the investigation stated: "I firmly and confidently conclude that neither the FCC nor any investigative body could have ascertained what the [investigating] Firm did either in terms of its comprehensiveness nor its accuracy." Lloyd Constantine Affidavit, ¶ 6, September 20, 1995 (TWCV Ex. 29).

Liberty also opposes TWCNYC's Motion by asserting that any credibility issues raised by the Report are immaterial and that the requested discovery is aimed at uncovering privileged information. See generally, Liberty Opposition. The Report appears to directly contradict Liberty's statements regarding when Liberty became aware of its unauthorized operations. The date when Liberty acquired this knowledge is a key issue in this proceeding. Discovery related to the factual basis for the Report is necessary to determine the accuracy of the Report, just as discovery was necessary to test the accuracy and reliability of other documents related to Liberty's licensing activities. TWCNYC is solely interested in learning the facts that underlie the Report's findings, which is information that is not protected by any privilege.

ARGUMENT

I. Discovery Related To The Report Is Necessary To Resolve Material Issues In This Proceeding.

The inconsistencies created by the Report's findings are highly significant to the resolution of this licensing proceeding. The salient purpose of this proceeding is to determine whether Liberty "possesses the requisite character qualifications" to be granted

licenses to operate microwave paths. Hearing Designation Order & Notice of Opportunity for Hearing, 11 FCC Rcd 14133, ¶ 30 (1996) ("HDO"). The January and May 1997 hearings before the Presiding Judge focused on the credibility and candor of Liberty's witnesses regarding when they first learned that Liberty was operating without FCC authorization. See Order, FCC 96M-265, ¶ 4 (rel. Dec. 10, 1996); Order, FCC 97M-63 (rel. April 21, 1997). The Report's findings directly contradict prior statements made by Liberty witnesses in the ongoing proceeding,[1] as well as findings that Liberty has urged the Presiding Judge to adopt.

In its Motion, TWCNYC noted that the Report contains several statements that contradict Liberty witnesses' prior testimony regarding when they initially learned that Liberty was operating without FCC authorization. See TWCNYC Motion, at 8-10. Specifically, during deposition and hearing testimony, Bruce McKinnon, Tony Ontiveros, Behrooz Nourain, and outside counsel (Jennifer Richter and Howard Barr) all stated that they did not have knowledge of Liberty's unauthorized activations prior to April 1995. The Report indicates the possession of such knowledge as early as April 1993. Id.

The Report also contradicts findings that Liberty has urged this Court to accept. For example, Liberty proposed a finding that Liberty's "outside counsel did not learn about premature activation of microwave paths before April 27, 1995." Supplemental Proposed Findings of Fact and Conclusions of Law of Liberty, filed June 11, 1997, ¶ 40 ("Liberty Supp. Findings"). Liberty also advanced a finding that Ms. Richter "was not informed and

---

[1]See TWCNYC Motion, at 8-10.

did not know of any unauthorized operation when she wrote the Richter letter [in April 1993]." Liberty Supp. Findings, ¶ 43. In addition, Liberty proposed a finding that Mr. Barr "did not learn of premature activations by Liberty before April 27, 1995." Id., ¶ 44. The Report explicitly states that "Pepper & Corazzini became aware in April 1993 that Liberty had in certain instances initiated microwave service prior to obtaining licenses but never communicated this fact to any Liberty officer." Report, at 15-16. Ms. Richter and Mr. Barr were the only Pepper & Corazzini attorneys handling Liberty's licensing work in April 1993. With knowledge of the contents of the Report, Liberty submitted proposed findings to the Presiding Judge that contradicted the Report at a time when the Report was unavailable either to TWCNYC or the Presiding Judge.[2] The Report, when compared to both its personnel's prior testimony and its proposed findings, raises additional questions about Liberty's credibility and candor in this proceeding.

Liberty does not deny the existence of inconsistencies between its personnel's testimony and the Report, but contends that the "mere fact of these alleged inconsistencies cannot form the basis for additional [dis]covery." Liberty Opposition, at 8. Not surprisingly, Liberty does not explain the basis for this assertion. The Report does more than impeach testimony about a trivial matter. It impeaches testimony about when Liberty first learned it was operating without FCC authorization, which is the central focus of this

---

[2]The fact that the Bureau proposed similar findings does not mitigate the seriousness of Liberty's behavior. The Bureau's proposed findings were always qualified by the phrase "record evidence" or the equivalent. Liberty's decision to pursue its appeal of the Commission's decision mandating disclosure of the Report and to obtain a stay of that decision put Bureau counsel, who had the Report but could not reveal its contents, in a difficult situation. Liberty's actions denied to the Bureau courses of conduct that were nevertheless available to Liberty.

proceeding. Moreover, the Report states that Mr. McKinnon, Liberty's Executive Vice President and a member of Liberty's management, "appeared" to be aware of Liberty's unauthorized operations in 1993. Report, at 11. Such a statement, if determined to be true, invalidates Liberty's contention that its principals did not learn of any unauthorized operations until April 1995.

Liberty further argues that additional discovery is not warranted because the Bureau had access to the Report, and nevertheless did not contend that Liberty knew of its unauthorized operations prior to April 1995. Liberty Opposition, at 8. Liberty overstates the Bureau's position in this proceeding. The Bureau is a party here, not the decisionmaker. By Liberty's logic, the Bureau's joinder with it in moving for summary decision in June 1996, should have ended the proceeding. While Liberty may wish that the proceeding had ended in the summer of 1996, it did not, despite the Bureau's having joined the motion. Moreover, the Bureau could not use the Report during this proceeding. Bureau Comments on TWCNYC's Motion, filed October 15, 1997, at 2 ("Bureau Comments"). In its proposed findings of fact submitted after the May 1997 hearing, the Bureau stated that "[t]he *record* evidence that Liberty did not learn about the illegal activation of microwave paths until April 1995 remains unaltered." Bureau Proposed Findings of Fact and Conclusions of Law for Phase II of Hearing Testimony, filed June 11, 1997, ¶ 37 (emphasis added). Now that the Report is available, the Bureau does not have to base its conclusions solely on the current record evidence, and in fact supports the taking of additional discovery concerning the Report. The Bureau states that "[t]he parties need to consider if the contents contradict, augment or agree with documents and testimony already produced in this proceeding."

Bureau Comments, at 2. The Report, on its face, contains statements that contradict Liberty's position regarding its knowledge of unauthorized operations, which is a core issue in this licensing proceeding. Discovery regarding the factual foundation for the Report's conclusions is required.

II. Liberty Should Be Compelled To Respond To TWCNYC's Interrogatories And Document Requests That Pertain To The Report And Documents Related Thereto.

A. The Interrogatories Seek Non-Privileged Factual Information.

The Presiding Judge should compel Liberty to respond to TWCNYC's interrogatory nos. 2, 3 and 4, and to document request no. 2, all of which pertain to the Report and documents related thereto. The responses to these discovery requests are relevant to the ongoing hearing proceeding and, with the possible exception of a few items, are not protected by the attorney-client privilege or the work-product doctrine.

The information TWCNYC has requested regarding identification of the people and documents involved in the preparation of the Report is strictly factual. As such, TWCNYC has been entitled to this information since it was first requested in TWCNYC's April 3, 1996 interrogatories, notwithstanding the fact that disclosure of the Report itself was stayed pending resolution of Liberty's appeal to the D.C. Circuit.

Facts are not protected under either the attorney-client privilege or work-product doctrine. See In re Semel, 411 F.2d 195, 197 (3d Cir. 1969) (the fact of a retainer, the identity of the client, the conditions of employment and the amount of the fee are not privileged); Church of Scientology v. Cooper, 90 F.R.D. 442 (S.D.N.Y. 1981) (questions asking whether discussions concerning various subjects were had, whether compensation was

received or arranged for, whether legal services were rendered and whether documents were shown did not violate the attorney-client privilege); Epstein, E.S., The Attorney-Client Privilege and the Work-Product Doctrine, at 308-09 (3d ed. 1997) ("Epstein") (work-product protection does not shield information, sources of information, identity of occurrence witnesses, or the existence and description of relevant documents from discovery). Even if a document is legitimately shielded from disclosure under the work-product doctrine, information pertaining to the document, or even information contained in the document, is not within the protection. Compare Liberty Opposition, at 14 (allowing TWCNYC to discover factual material that is "intertwined" with attorney work product would intrude into the mental processes of Liberty's counsel). A party is entitled to obtain such information through interrogatories. See Fed. R. Civ. P. 26(b)(3) and Advisory Comm. Note thereto, 48 F.R.D. 487, 501 (1970) ("No change is made in the existing doctrine, noted in the Hickman case [329 U.S. 495 (1947)], that one party may discover relevant facts known or available to the other party, even though such facts are contained in a document which is not itself discoverable"); see also Wright & Miller, Federal Practice and Procedure, § 2023 ("Wright & Miller"); Epstein, at 308-09 (citing Brock v. Frank V. Panzarino, Inc., 109 F.R.D. 157, 160 (E.D.N.Y. 1986); Eoppolo v. Nat'l R.R. Passenger Corp., 108 F.R.D. 292, 294 (E.D. Pa. 1985); United States v. Exxon Corp., 87 F.R.D. 624, 638 (D.D.C. 1980)).

Thus, there are no valid privilege claims to the strictly factual information TWCNYC has requested in interrogatory nos. 2, 3 and 4, and Liberty should be compelled to respond to those requests. Liberty's attempt to avoid responding to TWCNYC's interrogatory nos. 2,

3 and 4 is just another example of Liberty's repeated efforts to stand in the way of the discovery of facts that are relevant and important to this proceeding, contrary to Liberty's self-serving statement that it "has never stood in the way of discovering facts."[3] Liberty Opposition, at 12.

B. The Requested Documents Are Discoverable Because The Report Has Been Conclusively Found To Be Unprotected By Any Privilege.

The Presiding Judge should also order Liberty to produce documents in response to Document Request No. 2. Whatever argument that might have existed that the Report itself was privileged or protected attorney work product is moot. The D.C. Circuit's holding in Bartholdi Cable Co. v. FCC, 114 F.3d 274 (D.C. Cir. 1997), ended that argument. The D.C. Circuit expressly held that Liberty's claims of privilege with respect to the Report "were not properly raised" before the Commission, and Liberty, therefore, "waived its privilege claims." Id. at 279-80. Thus, Liberty's continued insistence that it has "consistently and vigorously asserted the protection of the attorney-client privilege and the attorney work product doctrine in connection with the internal investigation,"[4] has no relevance to this proceeding. The D.C. Circuit has held otherwise.

---

[3]Liberty's claim that litigation over its assertion of applicable privileges could take years and thereby cause an indefinite delay is merely an idle, but nevertheless inappropriate, threat. See Liberty Opposition, at 17 & n.48. TWCNYC does not disagree with Liberty's statement that a Presiding Judge's interlocutory decision regarding privileges is appealable to the full Commission as a matter of right. See 47 C.F.R. § 1.301(a)(2). However, only final decisions of the Commission are appealable to the D.C. Circuit. 28 U.S.C. § 2342(1).

[4]Liberty Opposition, at 12.

Once a privilege is waived, the general rule is that such waiver is total.[5] "The client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others, or to invoke the privilege as to communications whose confidentiality he has already compromised for his own benefit." Permian Corp. v. United States, 665 F.2d 1214, 1221 (D.C. Cir. 1981); see also In re Subpoena Duces Tecum, 738 F.2d 1367, 1370 (D.C. Cir. 1984) ("client cannot waive [the attorney-client] privilege in circumstances where disclosure might be beneficial while maintaining it in other circumstances where nondisclosure would be beneficial"); United States v. Kelsey-Hayes Wheel Co., 15 F.R.D. 461, 464 (E.D. Mich. 1954) ("If the client waives the privilege at a first trial, he may not claim it at a subsequent trial, because after the publication the communication is no longer confidential and there is no reason for recognizing the privilege").

When one privileged communication is waived, such as the Report, the general rule is that all communications on the same subject matter are waived as well. See, e.g., In re Sealed Case, 676 F.2d at 809, 817-18; Burke, 49 Baylor L. Rev. at 36 n.9. The D.C. Circuit's In re Sealed Case decision is factually similar to the present situation, and should govern the outcome here. In In re Sealed Case, the D.C. Circuit held that a party submitting its counsel's investigative report to the SEC had waived any privilege with respect to the disclosure of further documents necessary for a subsequently convened grand jury to properly

---

[5]While some courts recognize the "selective waiver doctrine" as an exception to the general rule of total waiver, the D.C. Circuit has rejected this theory as "wholly unpersuasive." Permian Corp., 665 F.2d at 1220-21; see also Burke, 49 Baylor L. Rev. at 43-44. Thus, in the D.C. Circuit, waiver of a privilege constitutes total waiver of that privilege.

evaluate the accuracy of the report. The court first noted that, with respect to attorney-client communications, "any voluntary disclosure by the client to a third party breaches the confidentiality of the attorney client relationship and therefore waives the privilege, *not only as to the specific communications disclosed but often as to all communications relating to the same subject matter.*" In re Sealed Case, 676 F.2d at 809 (emphasis added). The court then turned to the work-product doctrine, and held that "the fact that some of the [withheld] documents impeach the veracity of [the] Company's purported full disclosure [in the SEC report], makes it inconsistent with the purposes of the work product privilege to deny the grand jury access to these documents." Id. at 817.

The relationship of the requested documents and the Report is clear from Mr. Constantine's Affidavit: "the Firm was given complete access to Liberty's books and records and an unfettered and unlimited opportunity to interview all Liberty personnel, officers and outside-retained counsel . . . . Because of the complete absence of restrictions on the Firm's ability to review documents and interview personnel and outside counsel, the Firm was able to discover errors . . . ."[6]

Liberty's outrageous statement that "[a]ll documents generated by Liberty's attorneys and all communications between Liberty and its attorneys in the course of the internal investigation are protected by the attorney-client privilege and by the attorney work product doctrine"[7] is therefore completely indefensible. In fact, because the Report itself is now neither privileged nor protected work product, the following types of documents related to

---

[6]Constantine Affidavit, ¶¶ 5, 6.

[7]Liberty Opposition, at 11.

the Report are not privileged, and should be produced in response to TWCNYC's document request no. 2:

- Transcripts, including tape recordings, if any, of interviews of the "more than 20 employees and former employees"[8] who were interviewed during the course of the investigation that led to the compilation of the Report. See In re John Doe Corp., 675 F.2d 482 (2d Cir. 1982). In In re John Doe Corp., employee interviews were conducted as part of an investigation of the company's business practices. Id. at 484. The company claimed that these interviews were protected from discovery by the work-product doctrine, but the court held that

> [t]he need for the contents of the interviews is self-evident. Quite apart from the truth of the matters asserted therein, which is clearly pertinent, the statements may be relevant simply for the fact they were made because they may tend to prove what Doe Corp. knew and when it knew it. On that issue, the notes may be the only available evidence.

Id. at 492.

Similarly, in In re Kidder Peabody Sec. Lit., 168 F.R.D. 459 (S.D.N.Y. 1996), outside counsel was retained to prepare an investigative report into alleged misstatements of earnings. The firm conducted 120 interviews of 65 present and former employees, then prepared a report, which was eventually released to the public. Id. at 464. Defendants objected to the production of the drafts and interview documents used to prepare the report on grounds of both work-product and attorney-client privilege. On the issue of attorney-client privilege, the court determined, *inter alia*, that a

---

[8]Report, at 3.

> waiver may be found even if the privilege holder does not attempt to make use of the privileged communication; he may waive the privilege if he makes factual assertions the truth of which can only be assessed by examination of the privileged communication.
>
> * * *
>
> [T]he proffer of the report to the Commission at a time when the agency was apparently investigating [defendant] was plainly an invocation of the substance of the report in a 'litigative' context [and represented the defendant's] continuing effort to influence the outcome of pending or anticipated litigations and agency investigations.

Id. at 470-71. This fact, the court held, "suffices to waive any privilege for the underlying documents." Id. at 472. The court then ordered the production of all the "underlying interview documents." Id. at 473.

Likewise, Liberty should be compelled to produce all underlying interview documents related to the Report.

- Signed statements by persons interviewed during the course of the internal investigation. Such statements, affidavits, or declarations are simply statements of the person's individual knowledge regarding Liberty's FCC licensing practices. They do not consist of an attorney's notes or thought processes, nor are they communications made in confidence between a client and his attorney.

- Any factual back-up documentation provided by Liberty, its agents, employees, or any of the persons interviewed during the course of the investigation that counsel used in preparing the Report. Such information is factual, and as such, is not protected by any privilege. See discussion, *supra*.

Under Liberty's outrageous assertion that all documents generated by its attorneys, and all communications between it and its attorneys in the course of the internal investigation

are privileged,[9] vague, conclusory statements contained in the Report would just have to remain vague and unfounded, because TWCNYC would not be able to discover any foundation for such statements. For example, the Report states that

> it appears that Mr. McKinnon was aware from Mr. Nourain that some buildings were being activated without a specific FCC license or STA. Mr. McKinnon did not inform Mr. Price or other Liberty management officials. Mr. McKinnon stated that he did not believe that the absence of a specific license or STA was a problem because he believed Liberty could operate on the authority of Hughes Aircraft's experimental license until the FCC specifically granted the microwave paths.

Report, at 11. TWCNYC would like to know what these statements were based upon -- Interviews with Mr. McKinnon? Documents authored by Mr. McKinnon? Notes kept by Mr. McKinnon? An interview with Mr. Nourain? Liberty believes not only that none of these documents are discoverable, but also that TWCNYC is not entitled to discover the fact of whether Mr. McKinnon was even interviewed during the investigation! Such a result is completely inconsistent with existing law, contrary to common sense, and cannot be countenanced.

TWCNYC recognizes that it bears the burden of showing that any additional requested discovery is relevant to the outcome of this proceeding. See Liberty Opposition, at 15 & n.44. TWCNYC has met this burden, and the Bureau wholeheartedly agrees. See Bureau Comments, at 2-3.

CONCLUSION

For all of the foregoing reasons, and for all of the reasons set forth in TWCNYC's Motion, filed October 1, 1997, TWCNYC respectfully requests the Presiding Judge to issue

---

[9]Liberty Opposition, at 11.

an order admitting the Report in evidence, permitting additional discovery, and compelling Liberty to respond to discovery requests served in 1996. Upon completion of that discovery, TWCNYC would then inform the Presiding Judge whether it desires additional deposition discovery relating to the information produced and/or additional hearings for the purpose of admitting documentary evidence or taking witnesses' testimony.

Respectfully submitted,

Arthur H. Harding
R. Bruce Beckner
Jill Kleppe McClelland
Debra A. McGuire
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 939-7900

Attorneys for
TIME WARNER CABLE OF NEW YORK CITY
and
PARAGON COMMUNICATIONS

Dated: October 22, 1997

\58259

CERTIFICATE OF SERVICE

I, Debra A. McGuire, hereby certify that a copy of the foregoing Reply of Time Warner Cable of New York City and Paragon Communications to Opposition of Bartholdi Cable Co., Inc. was served this 22nd day of October, 1997 via facsimile and United States first class mail, upon the following:

Robert L. Begleiter, Esq.
Eliot Spitzer, Esq.
Constantine & Partners
909 Third Avenue, 10th Floor
New York, NY 10022
Facsimile: (212) 350-2701

Robert L. Pettit, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Facsimile: (202) 828-4969

Joseph Weber, Esq.
Mark Keam, Esq.
Federal Communications Commission
Wireless Telecommunications Bureau
Enforcement Division
2025 M Street, N.W., Room 8308
Washington, D.C. 20554
Facsimile: (202) 418-2644

Christopher A. Holt, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004
Facsimile: (202) 434-7400

The Honorable Richard L. Sippel**
Administrative Law Judge
2000 L Street, N.W., Suite 220
Washington, D.C. 20554
Facsimile: (202) 418-0195

Debra A. McGuire
Debra A. McGuire

** via hand delivery

\248